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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DEMILLE, DANTON D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,966

Applicant(s)

VAN BRUNT ET AL.

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-55 of U.S. Patent No. 6,379,316. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to recited a different combination of elements. All of the limitations now claimed have already been recited in one form or another in the previous patent.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the details of the mouthpiece such as the 1.5 inch tongue depressing portion and oval cross section as recited in claims 9-11, 14, 17, 21-23, 34-36, 42 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-10, 18, 19, 20, 27, 40, 41, 44, 45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Weisfeldt et al. 4,397,306. Weisfeldt teaches a chest compression vest 6, a pressure generator 7, 5 and a mouthpiece 12 that include an endotracheal tube which would extend into the mouth and depress the tongue. Since the mouthpiece provides positive and negative ventilation pressures to the lungs this would comprehend the claimed function of the mouthpiece minimizes airflow resistance. The mouthpiece provides increased airflow.

Claim 19 doesn't appear to further structurally define the invention except describing an act performed by the patient. The patient is not part of the claimed combination so it is not clear how much weight can be given this limitation. Such functional intended use language is dependent on the condition of the patient. Clearly, if the patient of Weisfeldt had a condition such as pneumonia, this simple act of compressing the chest would induce sputum. Lungs filled with phlegm could have caused the need for the Weisfeldt device. The same would apply to the last paragraph of claim 20.

Claims 12 and 13, 18, 19, 20, 27, 37, 38, 40, 41, 43, 44, 45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Steinhoff 402,779. Steinhoff teaches a chest compression vest C, a pressure generator A and a mouthpiece a1. The mouthpiece minimizes air flow resistance by being a large round opening. There is a port on the mouthpiece for connection to tube a and a source of aerosolized solution, lines 53-54 page 1. The same arguments made above regarding claims 19 and 20 would apply here as well.

Claims 27, 29-33, 40, 41, 43-45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Budd 4,977,889. As broadly recited, Budd teaches a means for applying force to a chest region of the patient in vest 16. Means for providing an oscillating pressure is the pump or air pulse system 18. There is a flow measuring device 108 in fluid communication with the mouth of the person via a conduit 110. This would appear to comprehend the claimed means for minimizing airflow resistance because the purpose of the device is to measure air flow to optimize the process. Since the purpose of the device is to measure air flow it would be detrimental for the device to alter the airflow in any way. The device would record inaccurate information if it did not read anything but the actual air flow from the patients mouth. Budd would appear to teach everything claimed.

Regarding claim 29, Budd teaches a high frequency of 10 to 30 hertz, column 6, lines 1-18. Regarding claim 30, applicant claims a frequency of 5 to 25 hertz. Budd teaches 10 to 30 hertz and actually states "the high frequency pulsing cycle will be above 5 hertz". Since the claimed frequency falls within 5 to 25 hertz, Budd comprehends this limitation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 15, 16, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisfeldt et al. 4,397,306. The mouthpiece of Weisfeldt has an endotracheal tube and therefore would have a portion that would extend at least 1.5 inches into the mouth. The tube would be about 0.6 inches high. The size of the mouthpiece that engages the mouth would


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appear to be about 1.5 inches wide however, any specific dimensions to the mouthpiece are well within the realm of the artisan of ordinary skill. Such considerations are dependent on practical intended use parameters and the size of the patient. Children would clearly use smaller dimensions.

Regarding claims 15, 16, the amount of air flow to the patient is well within the realm of the artisan of ordinary skill dependent on practical intended use considerations including the condition of the patient. There is no unobviousness to vary the capacity of the device as needed or required.

Claims 14, 20-26, 34-36, 39, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinhoff 402,779 in view of Press et al. 5,398,676. While Steinhoff provides generalities to the mouthpiece, Press teaches details of the outer portion 62 of the mouthpiece that is removably connected to the supply line 32. This outer portion 62 would appear to have a length of about 8 inches to the removable coupling. The exact dimensions of the coupling are well within the realm of the artisan of ordinary skill. It would have been obvious to one of ordinary skill in the art to modify Steinhoff to removably connect to the supply line using an outer portion of the mouthpiece as taught by Press to provide the details of the removable connection to the supply line.

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